IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.104 OF 2005

Smt.Vidhya Shankar Iyer. ..Applicant.

V/s.

Shri Shankar Nagraj Iyer. ..Respondent.

Ms.Sunita Sutrale for applicant.

Mr.T.V.Ganesh i/b. Ganesh & Co. for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 8, 2006.

P.C. :

1. Heard Counsel for the parties. Perused the pleadings. The affidavit which is tendered across the bar on behalf of the respondent be filed in the registry in the course of the day.

2. By this petition, the petitioner seeks transfer of M.J.Petition No.A-502/2005 from the Family Court, Nagpur to the Family Court No.3 at Mumbai, where the application moved by the applicant for relief of maintenance under section 125 of the Code of Criminal Procedure is pending. The ground stated in the application is that the applicant is jobless and has no source of income to maintain herself. The applicant is solely dependant on her

brother who is presently looking after her needs including the education of her daughter. The applicant has no financial support nor in a position to travel alone all the way to Nagpur to contest divorce petition filed by the respondent husband. Besides, it is stated that the daughter of the applicant Swati is presently aged 3 years and studying in Junior K.G. class. It will be difficult for the applicant to travel to Nagpur alongwith her daughter on every date of hearing of the petition; besides the applicant is terrified on account of the behaviour of the respondent husband and in-laws which she had to undergo during her stay in the matrimonial home.

3. This application is resisted by the respondent on the ground that the excuse given by the applicant that she is unemployed lady and totally dependent on her brother and that hard-pressed to defend the proceedings at Nagpur is no ground for transfer. To buttress this submission, reliance is placed on the decision of the Apex court in the case of **Preeti Sharma V/s.Manjit Sharma reported in (2005) 11 Supreme Court Cases 535**. It is stated that the applicant's married sister is at Nagpur and it is not as if the applicant will have to stay alone. Indeed,

the decision relied upon by the counsel for the respondent does indicate that the Apex Court has observed that merely because the petitioner is unemployed lady and fully dependent on her relatives, cannot be the ground for transfer of proceeding. It is observed that the hardship of the wife for undertaking travel can be mitigated by providing expenses for travel and stay. Relying on the decision of the Apex Court, the learned counsel for the respondent submits that the respondent is willing to offer appropriate travel and stay expenses to the applicant.

4. This submission however, overlooks the fact situation in the present case. In the present case, there are additional reasons stated in the application. There is no reason to doubt the correctness of the said reasons. The applicant has stated that she has to look after her three years old daughter who is presently studying in Junior K.G. Class. Besides, the applicant will have to undertake travel alongwith her minor child to the extent of 18 hours travel time by train. Merely because, the respondent is willing to compensate the applicant by providing travel and stay expenses at Nagpur, the hardship that will be suffered by the applicant

including the physical stress to the minor child to attend the hearing of the proceeding at Nagpur cannot be compensated by such financial assistance. The trial at Nagpur will not conclude in one hearing. On every hearing the child will have to take leave from the school. Besides the Respondent and the child will have to be escorted by some other family member. On the other hand, the respondent husband is gainfully employed and has the ability to attend proceedings before the Family Court, Mumbai. In any case, the respondent is required to attend the proceedings pending before the Family Court, at Mumbai instituted by the applicant for the relief of maintenance under section 125 of the Code. It will therefore, make no difference to the respondent to attend this additional proceeding to be transferred to Family Court, Mumbai. To obviate any hardship to the respondent, the trial court can be directed to list both matters preferably on the same day and to conduct the trial on day to day basis, whenever it commences, so that the respondent will not be required to take leave from his office to travel to Bombay intermittently. This approach is supported by the decision of the Apex Court in the case of **Pratibha Khemka V/s. Sanjay Kumar Khemka** reported in **I(2005)DMC 16(SC).** Even in that case, petitioner was

a single lady and required to travel 600 kms. alongwith small son who was studying in 1st standard. Similar situation is present in the case on hand.

5. Accordingly, in the interest of justice, I am inclined to allow this application in terms of prayer clause(a) with further direction that the transferred divorce petition and the pending application for maintenance will be heard by the same court preferably on the same day, one after the other and the trial thereof, if commences will be continued on day to day basis.

6. This application is allowed with costs to be paid by the respondent quantified at Rs.2,000/- to the applicant within two weeks from today.